

JUDGE BRIEANT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CV 03450

CANUS CONSTRUCTION, INC.

Plaintiff,

-against-

HOLT CONSTRUCTION CORP.,

Defendants.

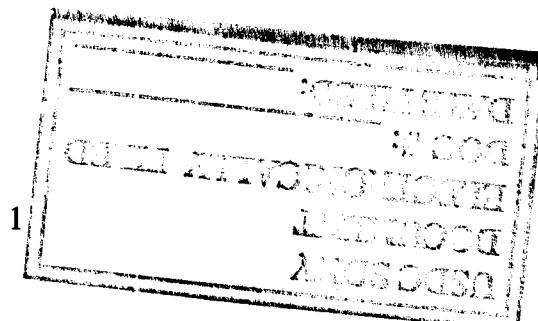
Civil Action No.

**COMPLAINT  
JURY TRIAL DEMANDED**

Plaintiff Canus Construction, Inc. ("Canus"), by its undersigned attorneys, as and for Complaint against Defendant Holt Construction Corp., alleges as follows:

**PARTIES**

1. Canus is a corporation formed and existing pursuant to the laws of Edmonton, Alberta, Canada with its principal place of business at 13030-146<sup>th</sup> Street, Edmonton, Alberta, Canada S7L 2H7 and is duly qualified to do business in New York State.
2. Upon information and belief, defendant Holt Construction Corp. ("Holt") is a corporation formed under and existing pursuant to the law of the State of New York with its principal place of business at 50 E. Washington Avenue, Pearl River, New York 10965.



U.S. DISTRICT COURT  
S.D. OF N.Y.  
APR - 8 PM  
37  
FILED  
EDMONTON, ALBERTA  
CANADA  
JULY 10 2008  
RECEIVED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
AT THE OFFICE OF THE CLERK  
BY THE CLERK  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 07-10-2008 BY SP/CLERK  
1

**JURISDICTION AND VENUE**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) as there is complete diversity of citizenship between the plaintiff and defendant and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(a) as Holt resides in this district.

**FACTS COMMON TO ALL CAUSES OF ACTION**

5. On or about October 10, 2006, Holt, in its capacity as a general contractor, entered into a written contract with Canus, in its capacity as sub-contractor, for millwork to be fabricated by Canus for delivery and installation at the Yonkers Pier Restaurant located in Yonkers, New York for an agreed-upon price of \$351,116.

6. Thereafter, Holt and Canus agreed to various change orders, or extras, which increased the sub-contract price by \$56,732.22 to \$407,848.22.

7. Between October 30, 2006 and May 7, 2007, Canus submitted the following invoices totaling \$407,848.22 to Holt pursuant to the sub-contract:

<u>Date</u>	<u>Invoice No.</u>	<u>Invoice Amount</u>
30 October 2006	2726	\$ 96,006.68
7 February 2007	2829	\$194,484.04
26 April 2007	2885	\$102,029.00
4 May 2007	2896	\$ 15,328.50

A copy of these invoices is annexed hereto as Exhibit 1.

8. Holt received and accepted the invoices identified in paragraph 7 without protest or objection.

9. Canus has fully complied with all of its fabrication, delivery and installation obligations under the sub-contract, as repeatedly acknowledged by Holt. Despite Canus' performance, to date it has only received payments totaling \$290,500.68, leaving a balance due and owing to Canus of \$117,347.54, no portion of which has been paid despite repeated demands.

**AS IN AND FOR A FIRST CAUSE OF ACTION**  
**(Account Stated)**

10. Canus repeats and realleges the allegations contained in paragraphs 1 through 9 hereof with the same force and effect as is set forth at length herein.

11. Between October 30, 2006 and May 4, 2007 Canus rendered to Holt full and true accounts of the indebtedness owed by Holt by reason of the millwork services performed by Canus at the Yonkers Pier Restaurant Project in the aggregate sum of \$407,848.22.

12. Holt accepted Canus' invoices referred to in paragraph 10 without protest or objection, but has only paid \$290,500.68 against these invoices, leaving a balance due and owing to Canus of \$117,347.54.

13. Holt is liable to Canus for an account stated in the amount of \$117,347.54 with interest at the rate of 9% from the date of each uncontested invoice.

**AS IN AND FOR A SECOND OF ACTION**  
**(Breach of Contract)**

14. Canus repeats and realleges the allegations contained in paragraphs 1 through 9 hereof with the same force and effect as is set forth at length herein.

15. Holt entered into an agreement with Canus pursuant to Holt agreed to pay Canus for millwork fabricated, delivered and installed pursuant to the sub-contract.

16. Canus discharged all its obligations under the sub-contract.

17. Holt breached its agreement with Canus by failing to pay plaintiff's invoices in full.

18. Canus has been damaged as a result of these breaches of the sub-contract in the sum of \$117,347.54 together with interest at the rate of 9% from the date of each uncontested invoice.

**AS IN AND FOR A THIRD CAUSE OF ACTION**  
**(Work, Labor and Services)**

19. Canus repeats and realleges the allegations contained in paragraphs 1 through 9 hereof with the same force and effect as is set forth at length herein.

20. The reasonable and agreed-upon value of the work, labor and services rendered to and accepted and retained by Holt, as reflected on Canus' unpaid invoices, is \$117,347.54.

21. By reason of the foregoing, Holt owes Canus \$117,347.54 plus interest at the rate of 9% from the date of each uncontested invoice.

WHEREFORE, Canus demands judgment as follows:

- (i) On its first cause of action, judgment against Holt in the amount of \$117,347.54 plus interest from the date of each unpaid invoice;
- (ii) On its second cause of action, judgment against Holt in the amount of \$117,347.54 plus interest from the date of each unpaid invoice;
- (iii) On its third cause of action, judgment against Holt in the amount of \$117,347.54 plus interest from the date of each unpaid invoice;

(iv) All together with such other and further relief as the Court deems proper.

Dated: New York, New York  
April 4, 2008

**SNOW BECKER KRAUSS P.C.**

By Ronald S. Herzog  
Ronald S. Herzog (RH-4932)  
*Attorneys for Plaintiff Canus Construction, Inc.*  
605 Third Avenue  
New York, New York 10158  
(212) 687-3860




**INVOICE**

13030 - 146 STREET  
 EDMONTON, ALBERTA T5L 2H7  
 Phone: (780) 452-3905  
 Fax: (780) 452-5838  
 GST #: 12235-6702

**SOLD TO:**  
 Holt Construction  
 50 E. Washington Avenue  
 Pearl River, NY 10965  
 Attention: Amanda Clappy

**INVOICE NUMBER** 2726  
**INVOICE DATE** October 30, 2006  
**PURCHASE ORDER NO.** Our Quotation  
**TERMS** Due Upon Receipt  
**JOB NUMBER** 0668

**SHIPPED TO:**  
 Yonkers Pier Restaurant  
 Yonkers, NY

ITEM	DESCRIPTION	PRICE	AMOUNT
	<b><u>PROGRESS INVOICE I</u></b>		
	Original Contract Value	\$320,022.26	
	Deposit Required – 30%	\$ 96,006.68	
	<b>TOTAL VALUE THIS INVOICE</b>	<b>\$ 96,006.68</b>	<b>\$96,006.68</b>
	<b><u>ATTENTION: PLEASE FAX YOUR CERTIFICATE OF CAPITAL IMPROVEMENT IMMEDIATELY TO CAROLYN AT (780) 452-5838</u></b>		
		<b>SUB-TOTAL</b>	<b>\$96,006.68</b>
		<b>TAX RATE</b>	<b>Exempt</b>
		<b>TAX</b>	<b>\$0.00</b>
		<b>CURRENCY</b>	<b>U.S. FUNDS</b>
			<b>TOTAL DUE</b>

**BANKING INFORMATION FOR WIRE TRANSFER:**

Bank: Bank of Montreal  
 10199 – 101 Street  
 Edmonton, Alberta  
 Canada T5J 3Y4

Transit #: 00149  
 Account Name: Canus Construction Inc.  
 Account #: 4606-254  
 Swift #: BOFMCAM2


**INVOICE**

13030 - 146 STREET  
 EDMONTON, ALBERTA T5L 2H7  
 Phone: (780) 452-3905  
 Fax: (780) 452-5838  
 GST #: 12235-6702

**SOLD TO:**  
 Holt Construction  
 50 E. Washington Avenue  
 Pearl River, NY 10965  
 Attention: Amanda Clappy

**INVOICE NUMBER** 2829  
**INVOICE DATE** February 7, 2007  
**PURCHASE ORDER NO.** Our Quotation  
**TERMS** Due Upon Receipt  
**JOB NUMBER** 0668

**SHIPPED TO:**  
 Yonkers Pier Restaurant  
 Yonkers, NY

ITEM	DESCRIPTION	PRICE	AMOUNT
	<b><u>PROGRESS INVOICE II</u></b>		
	Original Contract Value	\$351,116.00	
	Completed to Date – 75%	\$263,337.00	
	Add Change Orders to Date	\$ 27,153.72	
	Less Progress Invoice I	( 96,006.68)	
	<b>TOTAL VALUE THIS INVOICE</b>	<b>\$194,484.04</b>	<b>\$194,484.04</b>
		<b>SUB-TOTAL</b>	<b>\$194,484.04</b>
		<b>TAX RATE</b>	<b>Exempt</b>
		<b>TAX</b>	<b>\$0.00</b>
		<b>CURRENCY</b>	<b>U.S. FUNDS</b>
			<b>TOTAL DUE</b>

**BANKING INFORMATION FOR WIRE TRANSFER:**

Bank: Bank of Montreal  
 10199 – 101 Street  
 Edmonton, Alberta  
 Canada T5J 3Y4

Transit #: 00149  
 Account Name: Canus Construction Inc.  
 Account #: 4606-254  
 Swift #: BOFCAM2


**INVOICE**

13030 - 146 STREET  
 EDMONTON, ALBERTA T5L 2H7  
 Phone: (780) 452-3905  
 Fax: (780) 452-5838  
 GST #: 12235-6702

**SOLD TO:**  
 Holt Construction  
 50 E. Washington Avenue  
 Pearl River, NY 10965  
 Attention: Amanda Clappy

**INVOICE NUMBER** 2885  
**INVOICE DATE** April 26, 2007  
**PURCHASE ORDER NO.** Our Quotation  
**TERMS** Due Upon Receipt  
**JOB NUMBER** 0668

**SHIPPED TO:**  
 Yonkers Pier Restaurant  
 Yonkers, NY

ITEM	DESCRIPTION	PRICE	AMOUNT
	<b><u>PROGRESS INVOICE IIII</u></b>		
	Original Contract Value	\$351,116.00	
	Add Change Orders to Date	<u>41,403.72</u>	
	<b>TOTAL REVISED CONTRACT VALUE TO DATE</b>	<b>\$392,519.72</b>	
	Completed to Date – 100%	\$392,519.72	
	Less Progress Invoices I and II	( <u>290,490.72</u> )	
	<b>TOTAL VALUE THIS INVOICE</b>	<b>\$102,029.00</b>	<b>\$102,029.00</b>
		<b>SUB-TOTAL</b>	<b>\$102,029.00</b>
		<b>TAX RATE</b>	<b>Exempt</b>
		<b>TAX</b>	<b>\$0.00</b>
		<b>CURRENCY</b>	<b>U.S. FUNDS</b>
			<b>\$102,029.00</b>
			<b>TOTAL DUE</b>

**BANKING INFORMATION FOR WIRE TRANSFER:**

Bank: Bank of Montreal  
 10199 – 101 Street  
 Edmonton, Alberta  
 Canada T5J 3Y4

Transit #: 00149  
 Account Name: Canus Construction Inc.  
 Account #: 4606-254  
 Swift #: BOFMCAWZ

**CANUS**

## **CONSTRUCTION INC.**

# INVOICED

**13030 - 146 STREET  
EDMONTON, ALBERTA T5L 2H7**  
**Phone: (780) 452-3905**  
**Fax: (780) 452-5838**  
**GST #: 12235-6702**

**SOLD TO:**

Holt Construction  
50 E. Washington Avenue  
Pearl River, NY 10965

Attention: Amanda Clappy

**INVOICE NUMBER 2896**

**INVOICE DATE** May 4, 2007

**PURCHASE ORDER NO.** Our Quotation

## **TERMS Due Upon Receipt**

JOB NUMBER 0668

**SHIPPED TO:**

**Yonkers Pier Restaurant  
Yonkers, NY**

ITEM	DESCRIPTION	PRICE	AMOUNT
1	<b><u>CHANGE ORDERS</u></b> 12,18,19,20,21,22,23,24,25,26,27,28 and 29	\$15,328.50	\$15,328.50
		SUB-TOTAL	\$15,328.50
		TAX RATE	Exempt
		TAX	\$0.00
		CURRENCY	U.S. FUNDS
			TOTAL DUE

**BANKING INFORMATION FOR WIRE TRANSFER:**

**Bank:** Bank of Montreal  
10199 – 101 Street  
Edmonton, Alberta  
Canada T5J 3Y4

**Transit #:** 00149  
**Account Name:** Canus Construction Inc.  
**Account #:** 4606-254  
**Swift #:** BOFMCAM2